

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

**FREDERICK RADFORD,**

**Plaintiff,**

**v.**

**1:14-cv-2158-WSD**

**JERALD, Warden for State of  
Georgia,**

**Defendant.**

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**OPINION AND ORDER**

This matter is before the Court on Magistrate Judge Linda T. Walker's Final Report and Recommendation ("R&R"), recommending that this action be dismissed without prejudice.

**I. BACKGROUND**

On July 7, 2014, Plaintiff filed a Motion to Compel Discovery under O.C.G.A. § 9-11-26 and O.C.G.A. § 9-11-26. Plaintiff's Motion appears to be a request to compel answers from his appellate counsel regarding a potential ineffective assistance claim. The Motion is captioned as filed in a habeas case in the Superior Court of Tattnall County, Georgia, and the Court is unable to determine whether the Motion was filed in error, or if Plaintiff seeks an Order compelling discovery from the Court. On July 11, 2014, the Magistrate Judge

recommended that this action be dismissed without prejudice because Plaintiff's Motion appears to be related to his state habeas case, and he has not first obtained authorization from the Eleventh Circuit to file a second or successive habeas petition.

## **II. DISCUSSION**

### **A. Legal Standard**

After conducting a careful and complete review of the findings and recommendations, a district judge may accept, reject, or modify a magistrate judge's report and recommendation. 28 U.S.C. § 636(b)(1); Williams v. Wainwright, 681 F.2d 732, 732 (11th Cir. 1982), cert denied, 459 U.S. 1112 (1983). A district judge "shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). With respect to those findings and recommendations to which a party has not asserted objections, the district judge must conduct a plain error review of the record. United States v. Slay, 714 F.2d 1093, 1095 (11th Cir. 1983).

### **B. Analysis**

Because Plaintiff has not objected to the Magistrate Judge's finding that this action be dismissed, the Court reviews the Magistrate Judge's findings and

recommendations for plain error. See Slay 714 F.2d at 1095. On August 6, 2008, this Court denied Plaintiff's petition for a writ of habeas corpus under 28 U.S.C. § 2254. See Radford v. Walker, No. 1:07-cv-1756-WSD (N.D. Ga. Aug. 6, 2008). To the extent Plaintiff seeks to challenge his conviction in this Court or seek other relief, he cannot file a second habeas petition unless he first obtains authorization from the Eleventh Circuit. The Court finds no plain error in the Magistrate Judge's finding that there is no evidence to indicate that Plaintiff is authorized by the Eleventh Circuit to file a second habeas petition.

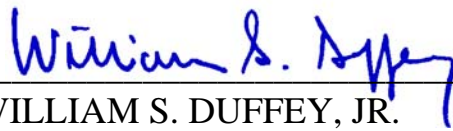
### **III. CONCLUSION**

Accordingly, for the foregoing reasons,

**IT IS HEREBY ORDERED** that Magistrate Judge Linda T. Walker's Final R&R is **ADOPTED**.

**IT IS FURTHER ORDERED** that this action is **DISMISSED WITHOUT PREJUDICE**.

**SO ORDERED** this 19th day of November, 2014.

  
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WILLIAM S. DUFFEY, JR.  
UNITED STATES DISTRICT JUDGE